# WORKERS' COMPENSATION COURT RULES

**Effective _____, 2009**

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 5

OFFICE OF THE WORKERS' COMPENSATION JUDGE

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Organizational Rule

24.5.101 ORGANIZATIONAL RULE (1) Organization of the Office of the Workers' Compensation Judge.

(a) History. The office of the workers' compensation judge was created by the 44th Legislature. HB 100 established the office of the workers' compensation judge on July 1, 1975.

(b) Workers' Compensation Judge. The workers' compensation judge is appointed by statute for a six-year term of office and granted all of the privileges and other emoluments afforded a district judge. The office of the workers' compensation judge is attached to the ~~d~~Department of ~~l~~Labor and ~~i~~Industry for administrative purposes only and is expressly authorized to hire its own personnel.

(c) Workers' Compensation Court. To carry out the legislative intent, the office of the workers' compensation judge was organized and functions along the lines of ~~the~~ a district court. The court follows the appropriate provisions of the Montana Administrative Procedure Act.

(2) Functions of Workers' Compensation Court.

(a) The ~~w~~Workers' ~~c~~Compensation ~~c~~Court has exclusive jurisdiction for the adjudication of disputes arising under Title 39, chapter 71 and chapter 72, MCA.

(3) Information or Submissions. General inquiries regarding the ~~w~~Workers' ~~c~~Compensation ~~c~~Court may be addressed to the judge or the clerk of court. All petitions for hearing may be addressed to the clerk of court.

(4) Personnel Roster. The ~~A~~addresses ~~are~~ is as follows:

~~(a) Judge, Workers' Compensation Court,~~ 1625 11th Avenue, P.O. Box 537, Helena, Montana 59624-0537.

~~(b) Clerk of Court, Workers' Compensation Court, 1625 11th Avenue, P.O. Box 537, Helena, Montana 59624-0537.~~

~~(c) Hearing Examiner, Workers' Compensation Court, 1625 11th Avenue, P.O. Box 537, Helena, Montana 59624-0537.~~

(5) Chart of Workers' Compensation Court Organization.

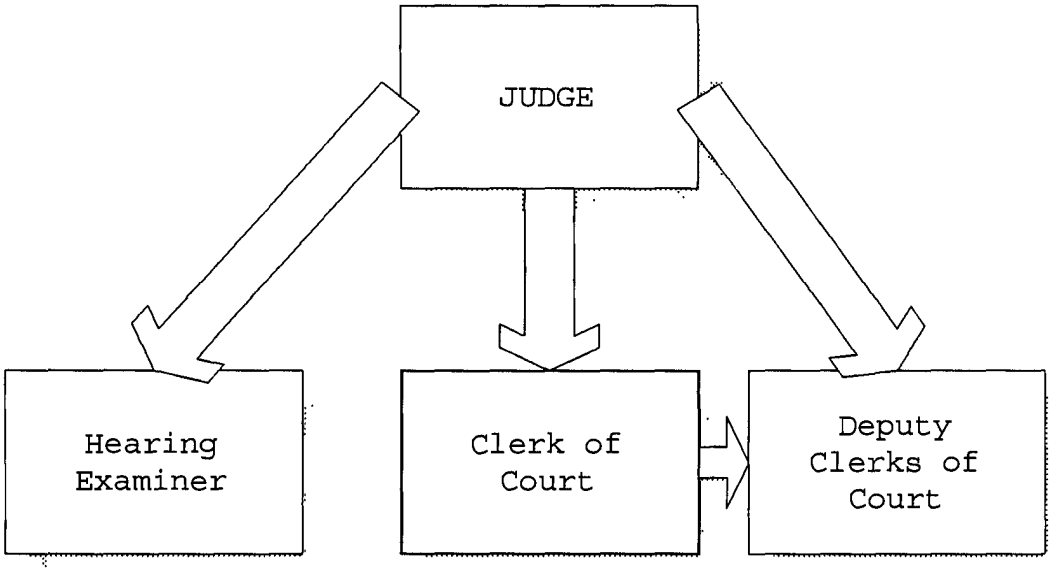
A descriptive chart of the office of the workers' compensation judge is attached as follows and is incorporated in this rule. (History: ~~Sec.~~ 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, Eff. 7/1/75; ARM Pub. 6/30/79; AMD, Eff. 9/30/87; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, Eff. 3/31/02.)

**24.5.101 LABOR AND INDUSTRY**

**OFFICE OF THE WORKERS' COMPENSATION JUDGE**

**Organizational Chart**

/s/ James Jeremiah Shea
Judge




**~~Sub-Chapter~~** Subchapter **2 reserved**

~~Sub-Chapter~~ Subchapter 3

Procedural Rules

24.5.301 PETITION FOR TRIAL (1) All requests for trial before the ~~w~~Workers' ~~c~~Compensation ~~c~~Court ~~shall~~ must be in petition form~~,~~ and signed by the petitioner or ~~her/his~~ the petitioner's attorney. The petition ~~shall~~ must comply with ARM 24.5.303(~~5~~7). Upon request, the court ~~will~~ shall provide a form which can be used as a petition. The petition ~~shall~~ must include the following information:

(a) in the case of an injury, the date and a description of the accident, or, in the case of an occupational disease, the date the petitioner became aware of the occupational disease and a description of the condition and its occupational origin;

(b) the county where the accident occurred or the occupational disease arose;

(c) a short, plain statement of the petitioner's contentions;

(d) for accidents occurring before July 1, 1987, a statement to the effect that the parties have made an effort to resolve the dispute~~,~~ but have been unable to do so;

(e) for accidents occurring on or after July 1, 1987, and for occupational disease claims, a statement that the mediation provisions set forth in 39-71-2411, MCA, have been complied with;

(f) a statement that the petitioner has freely exchanged all available pertinent medical records with the respondent pursuant to ARM 24.5.317 and will continue to do so;

(g) a list of the petitioner's potential witnesses and a summary of the subject matter of the~~ir~~ witnesses' anticipated testimony; and

(h) a list of written documents relating to the claim which may be introduced as evidence by the petitioner~~;~~.

~~(i) a request for emergency trial shall be indicated in the title of the petition, and the facts constituting the emergency explained in the petition. (ARM 24.5.311)~~

(2) Alternative pleading is permissible.

(3) Any claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief sought by the petitioner ~~shall~~ must be joined and pleaded in the petition. Failure to join and plead a claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief sought in the petition ~~shall~~ constitutes a waiver and ~~shall~~ bars any future claim with respect to such attorney fees, costs, and/or penalty.

(4) Except in cases involving ~~the uninsured employers' fund or involving~~ a request for relief against an employer, the caption of the petition, as well as subsequent pleadings, motions, briefs, and other documents, ~~shall~~ must not name the employer. This rule ~~shall not be construed as~~ does not relie~~v~~inge any employer from its duty to cooperate and assist its insurer, including any duty to assist in responding to discovery.

(5) There is no filing fee. Petitions and all other materials ~~are to~~ must be filed with the ~~C~~clerk of ~~C~~court at 1625 11th Avenue, P.O. Box 537, Helena, Montana 59624-0537. The party should file an original and ~~three~~ two copies of the petition. ~~and should~~ The petitioner must provide ~~indicate~~ the names and addresses of all adverse parties to

be served. Failure to comply with (1) and (4) of this rule will result in the document being returned to the petitioner. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.201; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2003 MAR p. 650, Eff. 4/11/03.)

24.5.302 RESPONSE TO PETITION (1) Within ~~20 days after the service of a petition by the court~~ the time set forth in Rule 303A, the respondent(~~s~~) shall serve upon the petitioner and all other parties, and file with the court, a response which ~~shall~~ must include the following information:

(a) a short, plain statement of the respondent's contentions;

(b) a statement of those facts which respondent believes to be uncontested;

(c) a list of respondent's potential witnesses and a summary of the subject matter of the~~ir~~ witnesses' anticipated testimony;

(d) a list of written documents relating to the claim which may be introduced as evidence by the respondent; and

(e) a statement that the respondent has exchanged all available pertinent medical records with the petitioner pursuant to ARM 24.5.317 and will continue to do so. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94.)

24.5.302A AMENDED PETITION (1) An amended petition must be filed within the time period set forth in the scheduling order or by leave of court. The response to the amended petition is due within the time set forth in Rule 303A.

24.5.303 SERVICE ~~AND COMPUTATION OF TIME~~ (1) Except as provided below, the court will serve the furnished copies of the petition, amended petition, or third-party petition upon adverse parties and others, as designated in the petitioner's or third-party petitioner's instructions, by mailing them ~~at~~ from Helena, Montana, with first class postage prepaid.

(a) If the respondent or third-party respondent is an unrepresented claimant, other individual, corporation, partnership, limited liability company, or other entity other than a Montana state agency, insurer doing business in Montana, self-insurer, insurance guarantee fund, or insurer qualified to do business in Montana at the time of an alleged injury or occupational disease and its successors and predecessors, then the party filing the petition or third-party petition shall cause personal service of a summons and the petition or third-party petition upon the respondent or third-party respondent in accordance with the provisions of the ~~Mont. R. Civ. P.~~ Montana Rules of Civil Procedure regarding service of summons and complaint.

(b) If the matter involves a third-party respondent, service ~~shall~~ must include all pleadings and orders filed in the case to date.

(c) Time lines for service, return of service, and response ~~shall~~ must be in

accordance with the rules of the ~~w~~Workers' ~~c~~Compensation ~~c~~Court or as ordered by the ~~w~~Workers' ~~c~~Compensation ~~c~~Court.

(d) The petitioner or third-party petitioner is responsible for providing correct names and addresses of all parties to be served by the court.

(2) All pleadings subsequent to the original petition, every written motion, and any other document described in ~~Rule 5,~~ Mont. R. Civ. P. 5 ~~shall~~ must be accompanied by proof of service as provided in ~~Rule 5,~~ Mont. R. Civ. P. 5 when submitted to the court. Service by mail is complete on mailing and is deemed served on the date as shown on the proof of service.

(3) Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a notice or other paper upon the party and the notice or paper is served by mail, ~~three days shall~~ the time set forth in Rule 303A will be added to the prescribed period.

~~(4) In computing the time for any response as provided for in these rules, weekends and holidays shall be included. If a deadline falls on a weekend or holiday the deadline is the next workday.~~

(~~5~~4) Unless the court specifically orders otherwise, filing with the court may be accomplished by mail addressed to the clerk, ~~and~~ with such filing ~~will be~~ deemed complete ~~on the date shown on the certificate of mailing~~ upon receipt by the court.

(~~6~~5) The court will accept fax and electronic filings, but an original signature page of any document filed by fax or electronic means ~~should~~ must be filed ~~in~~ with the court within ~~three days.~~ the time set forth in Rule 303A; otherwise the filing is void. The signature of an attorney or party on any fax or electronic filing ~~shall have the same effect, and~~ carr~~y~~ies the same representations and consequences, as a signature on an original filing. Electronic filings must be in .pdf format.

(~~7~~6) Every pleading, motion, or other paper of a party represented by an attorney ~~shall~~ must be signed by at least one attorney of record in ~~her/his~~ the attorney's individual name, whose address, phone number, fax number, and e-mail address, ~~shall~~ must be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other paper and state ~~her/his~~ the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate that the ~~person~~ party has read the pleading, motion, or other paper; that to the best of ~~her/his~~ the party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law~~,~~ ; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it ~~shall~~ will be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable

expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee. (History: ~~Sec.~~ 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.203; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02.)

24.5.303A COMPUTATION OF TIME (1) The following provisions apply to the computation of time for all filings:

(a) In computing the time for any response as provided for in these rules, the court will include weekends and holidays. If a deadline falls on a weekend or holiday, the deadline is the next workday.

(b) Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a notice or other paper upon the party and the notice or paper is served by mail, the court will add 3 days to the prescribed period.

(c) The court will accept fax and electronic filings, but an original signature page of any document filed by fax or electronic means must be filed with the court within 5 days.

(2) Except as provided elsewhere within Title 24, Chapter 5, Subchapter 3, the following time limits apply. This rule provides for the time limits only. Specific information as to format and contents of filings are found within the rule relating to that specific filing:

(a) **Responses to Petitions** - The respondent shall serve its response to a petition within 20 days after the service of a petition.

(b) **Responses to Amended Petitions, Motions to Intervene and Third-Party Petitions, Objections to Third-Party Petitions** - The respondent shall serve its response to an amended petition, a motion to intervene, or a third-party petition or any objections to a third-party petition within 10 days after the service of an amended or third-party petition or motion to intervene.

(c) **Joining Third Parties and Motions to Intervene** - A party must move to join a third party or to intervene within 30 days of the service of the petition by the court unless otherwise permitted by court order.

(d) **Motions** - Adverse parties must file answer briefs within 10 days of the filing of a motion. The moving party may file a reply brief within 5 days thereafter.

(e) **Interrogatories and Requests for Production** - Responses to interrogatories and requests for production shall be submitted within 20 days after the service of the interrogatories or requests for production unless the court lengthens or shortens the time. In no event will answers be due in less than 30 days from the service of the petition. Verification of interrogatory answers must be provided within 10 days of the request for verification.

(f) **Relief from Default Judgment** - Applications for relief from default judgment must be made within 60 days after judgment is entered.

(g) **Motions for Reconsideration, Petitions for New Trial, and Requests for Amendment to Findings of Fact and Conclusions of Law** - After the written order or

judgment is served, a party to the dispute may move for reconsideration, file objections to the court's decision and request a rehearing, petition for a new trial, or request amendment to the court's findings of fact and conclusions of law within 20 days. Any party opposing the motion for reconsideration, petition for new trial, or request for amendment to findings of fact and conclusions of law must respond to the moving party's pleading within 10 days from the date of service.

(h) **Taxation of Costs** - A prevailing claimant must serve an application for taxation of costs on the parties against whom costs are to be assessed within 10 days. Any party against whom costs are assessed may object within 10 days of the service of the application. Within 5 days of the service of the party's objections, the prevailing claimant shall serve his or her response on the objecting party.

(i) **Claims for Attorney Fees** - A party who has been awarded attorney fees must file a claim with the court within 20 days following the expiration of the appeal period or remittitur on appeal of the court's final decision, or within 20 days after filing of a court's decision which is not certified as final. Any party to the dispute may file an objection to the fees within 20 days following the service of a claim for attorney fees. Any request for hearing must be made at the same time as the objection is filed or within 10 days of the filing of the objection if the request is made by the party claiming attorney fees.

24.5.304 ALTERNATIVE PLEADING (REPEALED) (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.204; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; REP, 1994 MAR p. 27, Eff. 1/14/94.)

24.5.305 NATURE OF RULES (1) These rules are procedural in nature and will be applied uniformly to all cases regardless of the date of injury unless specifically otherwise provided. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1990 MAR p. 847, Eff. 5/1/90.)

24.5.306 BREVITY IN PLEADINGS AND FORM OF PAPER PRESENTED FOR FILING (1) The court encourages brevity in all pleadings and other documents. Documents which, in the court's opinion, are rambling or verbose may be returned to the party who submitted the document~~,~~ with instructions to correct any deficiencies and make the document more concise.

(2) All documents filed with the court ~~shall~~ must be typewritten or legibly printed on 8½ x 11 inch unnumbered, unlined paper.

(a) Documents that are typewritten or machine printed must use a font size of no smaller than 12 points.

(b) The court requests that documents be produced using a sans-serif font, preferably the font commonly known as Arial. Documents produced with a legible typeface will not be rejected as nonconforming.

(3) The name of the attorney, if any, representing a petitioner or a respondent, or the name of the party appearing without an attorney, together with telephone number

~~and a,~~ complete mailing address, fax number, and e-mail address, must appear in the upper left-hand corner of the first page of any pleading filed with the court.

(4) All documents ~~shall~~ must be on standard quality, white or unbleached, unglazed, acid-free recycled paper, and be a minimum of 25% cotton fiber content and a minimum of 50% recycled content, of which 10% ~~shall~~ must be post-consumer waste.

(5) All documents filed with the court ~~shall~~ must be single spaced with double spacing between paragraphs, printed on one side of the paper, and with margins of one inch on all sides except the top margin which ~~shall~~ must be 1½ inches.

(6) At the bottom of the second and all subsequent pages, the title of the ~~pleading~~ document and the page number ~~shall~~ must appear as a footer.

(7) Lines 1 through 7 of the right one-half of page 1 ~~shall~~ must be left blank for the use of the clerk.

(8) Nonconforming papers may not be filed without leave of the court except in the case of an unrepresented party. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1994 MAR p. 27, Eff. 1/14/94.)

24.5.307 THIRD-PARTY PRACTICE (1) Prior to or simultaneous with the filing of the response to a petition, the ~~responding party, an insurer or the uninsured employers' fund,~~ respondent may file a third-party petition with the court~~,~~ naming anyone ~~other insurer~~ not already a party to the action ~~which~~ who may be liable to ~~the responding insurer, the uninsured employers' fund, or claimant~~ any named party for any or all ~~or part~~ of the claims asserted in the petition.

(a) The third-party petition ~~shall~~ must contain a short, plain statement of the party's contentions with regard to the third party's liability and may incorporate allegations of the petition and/or the response to the petition.

(b) The ~~party~~ filing of the third-party petition ~~shall~~ must be in accordance with ARM 24.5.303 and 24.5.303A~~serve the third-party petition upon the original petitioner in the case and shall file with the court an original and three copies of the third-party petition, along with a letter indicating the names and addresses of third parties to be served~~.

(c) The ~~court~~ third-party petition ~~shall~~ must be served ~~the furnished copies of the third-party petition along with all other pleadings and orders filed in the case to date upon the third party, who shall be referenced as the third-party respondent~~ in accordance with ARM 24.5.303.

(2) After the response to a petition has been filed, any attempt to join a third party into a pending case ~~shall~~ must be through noticed motion in accordance with ARM 24.5.308.

(3) Within ~~10 days after the service of a third-party petition by the court~~ the time set forth in Rule 303A, the third-party respondent shall serve upon all parties, and file with the court, a response which ~~shall~~ must comply with ARM 24.5.302. (History: ~~Sec.~~ 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02.)

24.5.307A JOINDER AND SERVICE OF ALLEGED UNINSURED EMPLOYERS (REPEALED) ~~(1) In any case involving entitlement to benefits from the uninsured employers' fund, whether filed by a claimant, the uninsured employers' fund, or any other party, the alleged uninsured employer shall be deemed a party to the action.~~

~~(2) In all such cases, the uninsured employers' fund shall use due diligence to accomplish personal service of the petition upon the alleged uninsured employer within 20 days of the filing of the petition.~~

~~(3) Service shall be made in accordance with the Mont. R. Civ. P., except that time lines for service, return of service, or response shall be in accordance with the rules of the workers' compensation court or as ordered by the workers' compensation court.~~

~~(4) Failure or inability to timely serve the alleged uninsured employer shall not be cause to delay the proceeding absent agreement of the parties or order of the court for good cause.~~

~~(5) At the request of any party, for good cause shown, an issue as to whether the employer was in fact uninsured or owed claimant a duty of providing workers' compensation coverage, may be bifurcated from the trial of issues relating to a claimant's entitlement to benefits~~. (History: ~~Sec.~~ 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02.)

24.5.308 JOINING THIRD PARTIES (1) The joinder of parties ~~shall be~~ is governed where appropriate by the considerations set forth in ~~Rules 14, 19, 20, and 21 of the~~ Mont. R. Civ. P. 14, 19, 20, and 21.

(2) Unless otherwise permitted by order of the court, a motion to join a third party ~~shall~~ must be served within ~~30 days of the service of the petition by the court~~ the time set forth in Rule 303A. The motion ~~shall~~ must be filed and served on all parties and the proposed third party. Any party and the proposed third party shall have ~~10 days from the date of service~~ the time set forth in Rule 303A to serve objections to the motion. The court may, for good cause shown, grant joinder on such terms and conditions as are necessary to protect the interests of the existing parties, including the interest of a speedy remedy.

(3) If the joinder of a third party results in the trial being vacated and good cause is shown, the court may order the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. Such insurer has a right to seek indemnity from the responsible insurer if it is later determined that it was not ~~responsible~~ liable.

(4) Within ~~10 days of an order joining a third party~~ the time set forth in Rule 303A, the joined party shall serve upon all parties, and file with the court, a response which ~~shall~~ must comply with ARM 24.5.302. (History: ~~Sec.~~ 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW,

1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.206; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2000 MAR p. 1513, Eff. 6/16/00.)

24.5.309 INTERVENTION (1) Intervention in a pending proceeding ~~shall be~~ is governed by the considerations set forth in ~~Rule 24(a) and (b) of the~~ Mont. R. Civ. P. 24(a) and (b).

(2) Unless otherwise permitted by order of the court, a motion to intervene ~~shall~~ must be served within ~~30 days of the service of the petition by the court~~ the time set forth in Rule 303A. The motion ~~shall~~ must state the grounds upon which intervention is sought. A copy of the motion, supporting brief, and any affidavits ~~shall~~ must be served upon all parties. Any party to the dispute shall have ~~10 days following service~~ the time set forth in Rule 303A to serve an answer~~ing~~ brief. The court, in its discretion, will determine whether or not to allow intervention.

(3) If intervention results in the trial being vacated and good cause is shown, the court may order the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. Such insurer has a right to seek indemnity from the responsible insurer if it is later determined it was not ~~responsible~~ liable. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.207; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94.)

24.5.310 TIME AND PLACE OF TRIAL GENERALLY (1) The court has divided the state into six geographic areas. Generally, trials will be held in the place designated in (3) except for cases in the Butte venue, which ~~shall~~ will be tried in Helena unless the parties specifically request otherwise. Upon agreement of the parties and consent of the court, or upon order of the court, a trial may be held at any time and any place. The court will attempt to accommodate parties' requests for special trial settings; however, the court reserves the discretion to finally determine the time and place of all trials.

(2) Unless otherwise ordered, trials will commence on Monday of the week set for trial. The court will convene in each area four times per year unless good cause to cancel a trial term exists. Court will be in session or recess at the convenience of the court. The court will regularly prepare a schedule which sets deadlines, the dates for pretrials and trials, and the location of the pretrials or trials in each area.

(3) Each of the six areas designated for trial schedule purposes is named for the principal city in the counties making up the area as follows:

(a) Kalispell area:

(i) Flathead and Lincoln

(b) Missoula area:

(i) Lake, Mineral, Missoula, Ravalli, and Sanders

(c) Butte area:

(i) Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, Silver Bow,

Gallatin, Park, Sweet Grass, and Wheatland

(d) Billings area:

(i) Big Horn, Carbon, Golden Valley, Musselshell, Petroleum, Stillwater, Treasure, Yellowstone, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Wibaux, Daniels, Garfield, Phillips, Roosevelt, Sheridan, and Valley

(e) Great Falls area:

(i) Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Pondera, Teton, and Toole

(f) Helena area:

(i) Broadwater, Lewis and Clark, and Meagher

(4) Upon receipt of a petition regarding a dispute meeting the requirements of these rules, the court will issue a scheduling order fixing deadlines for discovery, the filing of pretrial motions, preparation of a pretrial order~~,~~ and other pretrial matters, setting the date of the final pretrial conference, and setting a trial at a time that will allow 75 days' notice to be given of the trial. The court may, for good cause, hold a trial over to the next regular trial date or specially set the trial for a different time and/or place. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.208; AMD, 1987 MAR p. 1618, Eff. 9/25/87; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2003 MAR p. 650, Eff. 4/11/03.)

24.5.311 EMERGENCY TRIALS (1) A request for emergency trial shall be indicated in the title of the petition, and the facts constituting the emergency explained in the petition. Trials may be held by the court upon less than 75 days' notice when good cause is shown. Such trials ~~shall be~~ are termed "emergency trials~~".~~ ." Facts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists. If adequate cause for the emergency setting is not shown in the petition, the trial will be set on the court's regular trial calendar. The court, on its own motion, may set a trial as an emergency trial. When an emergency trial is ordered, the court shall give reasonable notice of the time and place for a pretrial conference and for the trial.

(2) If the court determines that adequate cause exists for an emergency trial setting, the court will issue a notice to the opposing party. If the opposing party objects to the emergency trial setting, the party shall file written objections within 5 days. The written objections must contain a short, concise statement setting forth the basis for the objection. If no objection is filed within the prescribed 5-day period, the court will deem the emergency request valid and grant an emergency trial setting. If written objections are filed, the court may hold a hearing to determine whether the emergency setting will be allowed. The court will issue an order granting or denying the request for an emergency trial setting within 5 business days following the filing of the objections or at the conclusion of the hearing. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.209;

TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 27, Eff. 1/14/94.)

24.5.312 SETTING TIME AND PLACE OF TRIAL BY STIPULATION OR IN BEST INTERESTS OF THE COURT (REPEALED) (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.210; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; REP, 2003 MAR p. 650, Eff. 4/11/03.)

24.5.313 RECUSAL (1) ~~In all cases in which the workers' compensation judge recuses himself or herself, the judge shall designate and call in a sitting or retired district judge to preside over the cause. When a new judge has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service shall be attached to the assumption of jurisdiction form in the court file.~~The workers' compensation judge shall withdraw from all or part of any matter if the judge believes the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding from the list provided for in subsection (2). The substitute judge must be compensated at the same hourly rate charged by the Department of Justice Agency Legal Services Bureau for the provision of legal services to state agencies. The substitute judge must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When the substitute judge has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of jurisdiction form in the court file.

(2) The workers' compensation judge shall maintain a list of persons who are interested in serving as a substitute workers' compensation judge in the event of a recusal by the judge and who, prior to being put on the list of potential substitutes, have been admitted to the practice of law in Montana for at least 5 years, currently reside in Montana, and have resided in the state for 2 years. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1998 MAR p. 1281, Eff. 5/15/98.)

24.5.314 ADJUDICATION OF INTERIM BENEFIT CLAIMS UNDER 39-71-610, MCA (1) Appeals of determinations by the ~~d~~Department of ~~l~~Labor and ~~i~~Industry regarding interim benefits under 39-71-610, MCA, may be presented to the court in letter form. Such appeals ~~shall~~ will be initially addressed informally by the court through telephone conference involving all parties.

(2) If any party objects to informal resolution of a dispute under 39-71-610, MCA, a formal evidentiary hearing ~~shall~~ will be held on an expedited basis. Such hearing may be conducted through teleconference if all parties agree. If requested by any party, an in-person hearing will be promptly held in Helena or, at the court's discretion, in some other venue at a date and time set by the court. (History: ~~Sec.~~ 2-4-201, 39-71-610, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-

2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00.)

Rule 24.5.315 reserved

24.5.316 MOTIONS (1) Unless a different time is specified in these rules, the ~~time~~ deadline for filing any motion to amend a pleading, to dismiss, to quash, for summary judgment, to compel, for a protective order, in *limine*, or for other relief ~~shall be~~ is fixed by the court in a scheduling or other order.

(2) When an appeal is taken from a final order of the ~~d~~Department of ~~l~~Labor and ~~i~~Industry, unless a different time is fixed by order of the court, any motion related to the appeal must be filed and served prior to the date for submission of briefs.

(3) Every motion ~~shall~~ must be in writing and accompanied by a supporting brief. The brief may be accompanied by appropriate supporting documents and affidavits. An adverse party shall file an answer brief, which ~~shall~~ must be accompanied by appropriate documents and affidavits, within ~~10 days~~ the time set forth in Rule 303A. Within ~~5 days~~ the time set forth in Rule 303A thereafter, the moving party may file a reply brief. The filing deadlines set in this rule may be changed by order of the court. In addition to the requirements set forth in this rule, a party filing a motion for summary judgment under ARM 24.5.329, as well as a party opposing that motion, shall comply with the requirements of that rule.

(a) In no event will a response to a summary judgment motion be due earlier than a response to a petition.

(4) Failure to file briefs may subject the motion to summary ruling. Failure of the moving party to file a brief with the motion ~~shall~~ may be deemed an admission that the motion is without merit. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well-taken. Reply briefs are optional; ~~and~~ failure to file a reply brief will not subject the motion to summary ruling.

(5) Unless otherwise ordered, oral argument will not be permitted. Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits. If the court orders oral argument ~~is ordered~~, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted at the time set for filing of the final brief.

(6) An application for an extension of time for filing briefs or affidavits ~~shall~~ must be made in writing but may be filed electronically or by fax. The application must state whether any party agrees to or opposes the extension of time requested. An application for extension of time may be granted by the court without notice to the adverse party only upon the applicant's written certification that an attempt has been made to contact the adverse party. Whenever an ex parte extension has been granted, the moving party shall immediately advise the adverse party of the new due date. Except under extraordinary circumstances, extensions of more than 10 days from the original due date ~~shall~~ will not be granted. No extension of time will be granted without good cause shown if a party applies for the extension after the deadline has passed for

filing the document for which the extension is sought.

(7) Nothing in this rule ~~shall be construed to~~ precludes the filing or presentation of motions or objections related to evidentiary and other matters arising at trial.

(8) Motions regarding discovery, procedure, and similar pretrial issues may be presented informally by telephone conference call. The moving party ~~shall~~ will arrange the call and for the participation of all parties. The court may designate a hearing examiner to preside and decide the motion. The court may make an oral ruling or direct that the motion be presented in writing and briefed. Any oral order ~~shall~~ must thereafter be confirmed by written order. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 921, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1996 MAR p. 557, Eff. 2/23/96.)

24.5.317 MEDICAL RECORDS (1) "Medical records" for purposes of this rule includes all medical notes, reports, test results, correspondence, and other written records or materials regularly maintained by any medical provider as a part of the provider's records or file. ~~The term shall also~~ "Medical records" includes all reports, correspondence, and other documents authored by any medical provider.

(2) Within the time set by the scheduling or other order of the court, the parties ~~shall~~ must exchange all medical records in the~~ir~~ parties' possession ~~relating~~ relevant to the claimant's work-related medical conditions, other than records of professional consultants who have not examined the claimant and will not be witnesses at trial and whose records the party does not intend to offer into evidence. Failure to exchange any medical record by the exchange deadline ~~shall~~ precludes its use at trial except by stipulation of the parties or order of the court for good cause.

(3) Any party who intends to object to the ~~authenticity or genuineness of any medical record, to its admissibility pursuant to Rule 803(6) Mont. R. Evid., or to its~~ admissibility of a medical record ~~on any ground other than relevancy,~~ shall make such objection in writing. All objections to medical records ~~shall~~ must identify each medical record to which an objection is made and the particular objections to the record. The party must serve its objections ~~shall be served~~ upon the adverse party within such time fixed by the scheduling or other order of the court. Failure to object to a medical record in the manner and within the time specified by this rule ~~shall be~~ is deemed a waiver of any objection to the record~~, other than on relevancy grounds~~, and ~~shall~~ constitutes an admission by the party that the record is authentic and admissible under the ~~Mont.R.Evid.~~ Montana Rules of Evidence and the ~~R~~rules of the Workers' Compensation Court.

(4) ~~Where a timely objection to a medical record is served, the record shall nonetheless be admitted, however, the party objecting to the record is entitled to call the medical provider or, if the objection is to the authenticity of the record, the custodian of the record as a witness either at trial or by deposition and to cross-examine the witness.~~ A party is not required to call as a witness the medical provider or the custodian of the medical record solely for the purpose of authenticating the medical

record. If a party timely objects to the authenticity of a medical record, that party may call the medical provider or the custodian of the record as a witness either at trial or by deposition and may examine the witness regarding the authenticity of the medical record. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.212; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2001 MAR p. 153A, Eff. 3/01/01.)

24.5.318 PRETRIAL CONFERENCE AND ORDER (1) A final pretrial conference ~~shall~~ will precede every trial unless otherwise ordered by the court.

(2) The court may appoint a hearing examiner to conduct the pretrial conference and may delegate authority to such hearing examiner to make rulings on all matters discussed at the pretrial conference, including pretrial motions of the parties.

(3) In the discretion of the court in appropriate circumstances, a pretrial conference may be conducted by a telephone conference call.

(4) At the time of the pretrial conference, or as otherwise ordered by the court, the parties ~~shall~~ must present a proposed pretrial order in the form provided in (5). Disputes as to the content of the final pretrial order ~~shall~~ must be presented and resolved at the pretrial conference. The final, signed pretrial order ~~shall~~ must be filed and received at the court ~~by the Friday preceding the trial~~ on the date as set forth in the scheduling order.

(5) The pretrial order ~~shall~~ must be signed by all parties and ~~shall~~ must set forth the following:

(a) a statement of jurisdiction pursuant to the appropriate statutes;

(b) a list of all pending motions;

(c) any uncontested facts;

(d) any stipulations between the parties;

(e) a statement of the issues to be determined by the court;

(f) the ~~petitioner's and respondent's~~ parties' contentions, including in the case of ~~petitioner~~ the claimant all contentions which provide the basis for any claim of unreasonableness on the part of the insurer;

(g) a list of all exhibits to be offered by each party on an attached exhibit grid, including ~~the grounds of~~ any objections an adverse party may have to the admission of particular exhibits and the grounds upon which those objections are made;

(h) the identity of all witnesses who may be called, including the name, address, and occupation of each witness, and the subject matter of the testimony each witness will give;

(i) any unusual legal or evidentiary issues;

(j) the estimated length of trial; and

(k) a statement as to whether or not the parties will be filing trial briefs and/or proposed findings of fact and conclusions of law.

(6) Upon approval by the court, the pretrial order ~~shall~~ supersedes all other pleadings and ~~shall~~ governs the trial proceedings. Amendments to the pretrial order

~~shall be~~ are allowed by either stipulation of the parties or leave of court for good cause shown.

(7) All exhibits which will be offered at trial ~~shall~~ must be provided to the court ~~at the time of the pretrial conference~~ on the date set forth in the scheduling order. The exhibits ~~shall~~ must be bound or in a three-ring notebook. The exhibits ~~shall~~ must be tabbed and numbered consecutively. ~~All pages within an exhibit shall be numbered beginning with 1.~~ The pages within each exhibit must be numbered sequentially beginning with 1. All parties' exhibits must be combined in the same exhibit notebook and must be numbered sequentially beginning with 1. Exhibits attached to depositions must also be numbered sequentially. The court may refuse to accept exhibits which do not meet these criteria and/or may order the parties to resubmit the exhibits in the correct format. Petitioner shall provide an additional exhibit book for trial witnesses.

(8) Upon request, an earlier preliminary pretrial conference may be scheduled and held to address any discovery or other issues encountered by the parties. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.213; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 2003 MAR p. 650, Eff. 4/11/03.)

Rules 24.5.319 through 24.5.321 reserved

24.5.322 DEPOSITIONS (1) Any party may take the testimony of any person, including a party, by deposition upon oral examination after the petition has been served. Leave of court, granted with or without notice, must be obtained only if the petitioner seeks to take a deposition prior to the expiration of 20 days from the date of service of the petition. The taking of a post-trial deposition requires leave of court. The attendance of witnesses may be compelled by subpoena as provided by ARM 24.5.331.

(2) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding. The notice ~~shall~~ must state the time and place for taking the deposition and the name and address of each person to be examined. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena ~~shall~~ must be attached to or included in the notice.

(3) The court may, for good cause shown, lengthen or shorten the time for taking the deposition.

(4) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in that person's presence, record the testimony of the witness. The testimony ~~shall~~ must be stenographically recorded unless otherwise ordered by the court. If requested by one of the parties, the testimony ~~shall~~ must be transcribed.

(5) Unless otherwise agreed, all objections must be made at the time of taking

the deposition and be included within the transcript of the deposition. Evidence objected to ~~shall~~ must be taken subject to the objections. Deposition objections must be briefed. ~~in the parties' proposed findings of fact and conclusions of law~~. Failure to do so ~~will~~ may be deemed a withdrawal of the objections.

(6) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the taking of the deposition ~~shall~~ must be suspended for the time necessary for the objecting party to move the court for an order. The court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition. If the order made terminates the examination, it ~~shall~~ may be resumed thereafter only upon the order of the court. The provisions of ARM 24.5.326 apply to the award of expenses incurred in relation to the motion.

(7) When the testimony is fully transcribed, the deposition ~~shall~~ must be submitted to the witness for examination and ~~shall~~ must be read to or by the witness. Any changes in form or substance which the witness desires to make ~~shall~~ must be entered upon the deposition, which ~~shall~~ must then be signed by the witness under oath, unless the parties and the witness waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 10 days of its submission to the witness, the officer shall sign it and state on the record the reason, if any, that the deposition has not been signed and it may then be used as fully as though signed.

(8) Unless the court orders otherwise, the parties, by written stipulation, or by stipulation entered upon the record of a deposition, may provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

(9) Regardless of the availability of a witness or party to testify at trial, the circumstances of workers' compensation cases make it desirable, in the interest of justice, that a deposition of a witness or a party may be used by any party for any purpose unless the court restricts such usage upon a finding that the interests of justice would be served thereby.

(10) Any party participating in a deposition may make a simultaneous videotape or digital recording of the deposition. A party who intends to videotape or digitally record a deposition shall, in the notice of deposition, notify all parties. ~~of her/his intention. A copy of the videotaped deposition must be provided to all parties.~~ If any party proposes to offer the videotaped or digitally recorded deposition for the court's consideration, that party shall provide a copy to the court. Any videotaped or digitally recorded deposition provided to the court ~~shall~~ must be in VHS or DVD format and ~~shall~~ must be labeled with the name of the case and the name or names of all witnesses whose depositions are contained on the videotape or digitally recorded deposition. Each videotaped or digitally recorded deposition filed with the court ~~shall~~ must be accompanied by a transcript prepared by the court reporter who was present at the

deposition.

(11) A party may take a deposition upon written questions. Reasonable notice of the name and address of the person who is to answer the questions and the name or descriptive title and address of the officer before whom the deposition is to be taken ~~shall~~ must be given to opposing parties. Within 10 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Thereafter, within 10 days a party may serve redirect questions. Recross-questions must be served upon all other parties within ~~five~~ 5 days of the service of the redirect questions. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.214; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94.)

24.5.323 INTERROGATORIES (1) A party may serve upon an adverse party, with the petition or at any time after the service of a petition, written interrogatories to be answered by the party served. ~~Where~~ If a party wishes to serve interrogatories with the petition, the party ~~shall~~ must furnish sufficient copies to the court for service with the petition.

(2) The party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within ~~20 days after the service of the interrogatories~~ the time set forth in Rule 303A unless the court lengthens or shortens the time. In no event ~~shall~~ will answers be due in less than ~~30 days from the service of the petition~~ the time set forth in Rule 303A.

(3) If the interrogatories are propounded upon the claimant or any other party who is a natural person, then the answers must be signed under oath by the party. If the party is the insurer or other entity which is not a natural person, then the party's attorney or other representative of the party may sign the answers and such answers need not be verified. Whether or not verified, the signature of the person signing the answers ~~shall~~ constitutes a certification that the answers are complete and truthful to the best of the signor's knowledge.

(4) If the answers to interrogatories are on behalf of an insurer or some other party which is not a natural person, the party propounding the interrogatories may, after receiving the answers, request that the answers be verified, under oath, by the person employed by the insurer or party, other than an attorney for the insurer or party, having the most knowledge of the subject matters mentioned in the interrogatories. The request must be made in writing but need not be filed with the court. Within ~~10 days after the request is served~~ the time set forth in Rule 303A, the insurer or other party shall provide the requested verification.

(5) Proof of service of interrogatories served and answers thereto must be filed with the court simultaneously with the service of discovery on the other party. Interrogatories and answers thereto ~~shall~~ may not be filed except by leave of the court. When any motion is filed making reference to interrogatory answers, the party filing the motion ~~shall~~ must submit with the motion the relevant interrogatories and interrogatory

answers to which reference is made. Answers to interrogatories may be used at trial to the extent allowed by the ~~Mont. R. Evid.~~ Montana Rules of Evidence and the ~~Mont. R. Civ. P.~~ Montana Rules of Civil Procedure.

(6) No party shall serve on any other party more than 20 interrogatories in the aggregate, inclusive of subparts. Subparts of any interrogatories ~~shall~~ must relate directly to the subject matter of the interrogatory. Any party desiring to serve additional interrogatories ~~shall~~ must file a written motion setting forth the proposed additional interrogatories and the reasons establishing the necessity for their use.

(7) Each interrogatory ~~shall~~ must be answered separately and fully in writing under oath unless it is objected to, in which event the reasons for objection ~~shall~~ must be stated in lieu of an answer. Objections may be made because of annoyance, expense, embarrassment, oppression, irrelevance, or other good cause. Objections ~~are to be~~ must signed by the ~~attorney~~ party making them. The party answering the interrogatories shall set forth a verbatim recopy of each of the interrogatories, followed by the answer or objection thereto.

(8) The court will, except in extraordinary circumstances, sustain objections to numerous and complex interrogatories which are not limited to the important facts of the case and which are concerned with numerous minor details.

(9) An interrogatory is not objectionable merely because it is phrased in the form of a request for admission. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.215; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 921, Eff. 5/1/92; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98.)

24.5.324 REQUEST FOR PRODUCTION (1) A party may serve a request for production upon an adverse party either with the petition or at any time after the service of a petition.~~a request for production.~~ ~~Where~~ If a party wishes to serve a request for production with the petition, the party shall furnish sufficient copies to the court for service with the petition. The request may be:

(a) to produce and permit the party making the request, or the party's agent, to inspect and copy any designated documents or records, or to copy, test, or sample any tangible things, which may be relevant and which are in the possession, custody, or control of the party upon whom the request is served; or

(b) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the limits of relevancy.

(2) Proof of service of requests for production served and responses thereto must be filed with the court simultaneously with the service of discovery on the other party. Requests for production and answers thereto ~~shall~~ will not be filed except by leave of the court. When a motion is filed making reference to a request for production, the party filing the motion shall also submit ~~with that motion,~~ the request for production,

the response thereto, and the documents produced pursuant to the response. Requests for production and answers thereto may be used at trial to the extent allowed by the ~~Mont. R. Evid.~~ Montana Rules of Evidence and the ~~Mont. R. Civ. P.~~ Montana Rules of Civil Procedure.

(3) The party upon whom a request is served shall serve a written response within ~~20 days after service of the request~~ the time set forth in Rule 303A. ~~The court may allow a longer or shorter time. In no event shall a response be due in less than 30 days from the service of the petition.~~ The response ~~shall~~ must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection ~~shall~~ must be stated. For a partial objection, the part ~~shall~~ must be specified.

(4) If the request is for production of the file of a party and objection is made to such production on the grounds of privilege or work product, the objecting party shall produce all documents other than those specific documents which are subject to objection. Where the objection is only to part of a document, the document ~~shall~~ must be produced with the objected portions deleted. The objecting party shall also provide in its response a list of documents which are subject to objections, specifically identifying:

(a) the type of document;

(b) the number of pages of the document;

(c) the general subject matter of the document;

(d) the date of the document;

(e) where the document is a communication, the author of the document, ~~and her/his~~ the address of the author, and the relationship of the author and the addressee;

(f) whether the objection extends to the entire document or only to portions of the document; and

(g) the specific privilege, including work product, which is being claimed as to each document.

(5) Where the objecting party asserts that this minimal information would encroach upon the attorney-client privilege or the work-product doctrine, the party must state how disclosure of the information would violate the privilege or doctrine.

(6) An objection based on a claim of attorney-client privilege or work product will be ruled on only upon the filing of a motion to compel, at which time the following procedure ~~shall~~ apply~~y~~ies:

(a) along with ~~its~~ the answer brief, ~~counsel for~~ the objecting party shall furnish the court with a copy of ~~its~~ the original response to the request for production and the original or a copy of all documents which are identified in the motion to compel;

(b) where only parts of the document are subject to an objection, ~~counsel for~~ the objecting party shall identify those parts; and

(c) the court will review the documents *in camera* and sustain or overrule each objection.

(7) If the request is intended to obtain production of documents which are not in the adverse party's possession but are within the adverse party's custody or control,

unless otherwise ordered by the court, the adverse party may, in lieu of providing the documents, provide an authorization or a release as necessary to obtain such documents from all persons or entities physically possessing the documents. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.216; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 1996 MAR p. 557, Eff. 2/23/96.)

24.5.325 LIMITING DISCOVERY (1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the court;

(f) that a deposition, after being sealed, be opened only by order of the court;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(2) If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 675, Eff. 4/1/94.)

24.5.326 FAILURE TO MAKE DISCOVERY--SANCTIONS (1) If a party fails to respond to discovery pursuant to these rules, or makes evasive or incomplete responses to discovery, or objects to discovery, the party seeking discovery may move for an order compelling responses. With respect to a motion to compel discovery, the court may, at the request of a party or upon its own motion, impose such sanctions as it deems appropriate~~,~~. Such sanctions include but are not limited to ~~including, but not limited to,~~ awarding the prevailing party attorney fees and reasonable expenses incurred in obtaining the order or in opposing the motion. Sanctions ~~shall~~ will be imposed against the non-prevailing party unless the party's position with regard to the motion to compel was substantially justified or other circumstances make sanctions

unjust. If the party ~~shall~~ fails to make discovery following issuance of an order compelling responses, the court may order such sanctions as it deems required and just under the circumstances. Prior to any imposition of sanctions, the court shall provide the party who may be sanctioned with the opportunity for a hearing. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98.)

24.5.327 DEFAULT (1) If a party required to file a responsive pleading under these rules fails to file a responsive pleading within the time specified, or otherwise fails to defend, the court at the request of the petitioner or upon its own motion may issue an order providing that the party ~~shall~~ file a responsive pleading within 10 days, or in the alternative, ~~shall~~ appear before the court at a specified date, time, and place to show cause why the party should not be found in default and relief granted in accordance with the petition. The order ~~shall~~ will be served by mail if upon an insurer, otherwise by certified mail or through personal service as directed by and at the discretion of the court.

(2) If the party fails to file a responsive pleading within the time provided or to appear at the show cause hearing, the court may enter judgment by default.

(3) If any party fails to comply with any order of the court, the court may, after notice and hearing, enter a default judgment against the party.

(4) If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to inquire into amounts of benefits or other matters, the court shall conduct a hearing into those matters.

(5) Applications for relief from default judgment must be ~~made within 60 days after judgment is entered and~~ based upon good cause shown, such as mistake, inadvertence, surprise, or excusable neglect and must be made within the time set forth in Rule 303A. (History: ~~Sec.~~ 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00.)

Rule 24.5.328 reserved

24.5.329 SUMMARY JUDGMENT (1)~~(a)~~ A party may, at any time after the filing of a petition for hearing, move for a summary judgment in the party's favor upon all or any part of a claim or defense.

(a) ~~The time for filing shall be fixed by the court as provided by ARM 24.5.316(1).~~ The court shall fix the time for filing as provided by ARM 24.5.316(1).

(b) Because cases in the ~~w~~Workers' ~~c~~Compensation ~~c~~Court are heard on an expedited basis, a motion for summary judgment may delay the trial without any corresponding economies. The time and effort involved in preparing briefs and resolving the motion may be as great or greater than that expended in resolving the disputed issues by trial. For these reasons, summary judgment motions typically will be disfavored. The court may decline to consider individual summary judgment motions

where it concludes that the issues may be resolved as expeditiously by trial as by motion.

(c) If upon the filing of a motion for summary judgment, the party against whom the motion is directed believes that summary judgment is inappropriate for the reasons set forth in (1)(b) above, that party shall immediately notify the court and arrange for a telephone conference between the court and counsel. The court will determine after the conference whether further briefing and proceedings are appropriate.

(2) Subject to the other provisions of this rule, summary judgment ~~shall~~ will be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for production, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(3) Any party filing a motion under this rule shall include in its brief a statement of uncontroverted facts~~, which shall~~ setting forth in full the specific facts on which the party relies in support of the motion. ~~The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found~~. Any party opposing a motion filed under this rule shall include in ~~their~~ the party's opposition a brief statement of genuine issues~~,~~ setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party. Each party's brief shall set forth the specific facts in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found.

(4) If the movant and the party opposing the motion agree that ~~there is~~ no genuine issue of any material fact exists, they shall jointly file a stipulation with the court setting forth a statement of stipulated facts. This stipulation ~~shall~~ must be prepared and filed in lieu of the statements required by (3) of this rule.

(5) If either party desires a hearing on the motion, ~~a request must be made~~ the party must make the request in writing no later than the time specified for the filing of the last brief. The court ~~will~~ may thereupon set a time and place for hearing. If no request for hearing is made, any right to hearing afforded by these rules will be deemed waived. The court may order a hearing on its own motion.

(6) If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court~~, by examining the pleadings and the evidence before it, and in its discretion, by interrogating counsel, shall, if practicable,~~ may on its own motion ascertain what material facts exist without substantial controversy and what material facts are ~~actually and~~ in good faith controverted. ~~It~~The court shall thereupon make an order specifying the facts that appear without substantial controversy~~,~~ and direct~~ing~~ such further proceedings in the action as are just. Upon the trial of the action, the facts so specified ~~shall~~ will be deemed established~~,~~ and the trial ~~shall~~ will be conducted accordingly.

(7) Supporting and opposing affidavits ~~shall~~ must be made on personal knowledge, ~~shall~~ must set forth such facts as would be admissible in evidence, and

~~shall~~ must show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit ~~shall~~ must be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to discovery, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that ~~there is~~ a genuine issue exists for trial. If the adverse party does not so respond, the court may enter summary judgment, ~~if appropriate, may be entered~~ against the adverse party.

(8) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(9) Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall ~~forthwith~~ order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1996 MAR p. 557, Eff. 2/23/96.)

24.5.330 VACATING AND RESETTING TRIAL (1) A party must request to vacate and reset a trial ~~must be~~ in writing and ~~be supported by~~ for good cause shown. The application must state whether any party agrees to or opposes the request. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.217; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1998 MAR p. 1281, Eff. 5/15/98.)

24.5.331 SUBPOENA (1) Every subpoena ~~shall state the name of the court, the title of the action, and the case number, and shall must command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence. An attorney as an officer of the court may also issue and sign a subpoena or subpoena for the production of documentary evidence on behalf of the court. A subpoena may be issued only for trial a court proceeding or a noticed deposition. If all parties to the action agree, subpoenaed documents may be produced without the necessity of a noticed deposition, such as by simultaneous mailing to all parties or through production at a time and place agreed upon by the parties without the presence of a court reporter, otherwise the documents must be produced at trial or at a deposition with a court reporter.~~

~~(2) A subpoena may be issued for the purpose of taking a duly noticed deposition or compelling attendance of a witness at trial, and may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein in accordance with (1); but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable, unduly burdensome or oppressive, or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. Any party serving a subpoena for the production of documentary evidence shall provide all other parties to the dispute reasonable notice of the place, date, and time for such production. In the event a subpoena is found to be unreasonable, unduly burdensome, or oppressive, the court may impose sanctions on the party issuing or requesting the subpoena, which may include, but are not limited to, lost earnings and a reasonable attorney fee.~~

~~(3) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall must be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by state law. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.~~

~~(4) If the subpoena is for the production of the file of a party, and objection is made to the production of such file, the deposition, if one is in progress, shall must be recessed, and the procedures set forth in ARM 24.5.324(4) shall must be followed.~~

~~(5) Failure by any person without adequate excuse to obey a subpoena served upon her/him that person may be deemed a contempt of the court~~ must comply with ARM 24.5.331. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02.)

24.5.332 CONDUCT OF TRIAL (1) Trials will be held in courtrooms when available or any other designated place.

(2) The trial will be conducted in the same manner as a trial without a jury. The trial ~~shall~~ must proceed in the following order unless the court, for good cause and special reasons, otherwise directs.

(a) The party on whom rests the burden of the issues may briefly state ~~his~~ the party's case and the evidence by which ~~he~~ the party expects to sustain it.

(b) The adverse party may then briefly state ~~his~~ the adverse party's defense and the evidence ~~he~~ the adverse party expects to offer in support of it, or ~~he~~ may wait and do this at the beginning of ~~his~~ the adverse party's case-in-chief.

(c) The party on whom rests the burden of the issues must produce ~~his~~ the party's evidence; the adverse party will then follow with ~~his~~ the adverse party's evidence.

(d) The parties will then be confined to rebuttal evidence, unless the court, for good reasons and in the furtherance of justice, permits either party to offer further evidence in support of its case-in-chief. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.218; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89.)

24.5.333 INFORMAL DISPOSITION (1) In the discretion of the court, informal disposition may be made of a dispute or controversy by stipulation, agreed settlement, consent order, or default. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.219; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89.)

24.5.334 SETTLEMENT CONFERENCE (1) In its discretion, the court may, either on its own motion or upon request of any party, order a settlement conference at any time before decision in any case pending before the court. Such settlement conference will normally be conducted by a hearing examiner appointed by the court or, if the parties agree, by an outside mediator. ~~In the event~~ If the parties use an outside mediator ~~is used~~, the parties shall share and pay the expense of hiring the mediator. The conference may be in person or by conference telephone call at a time and place as the court may direct. The court may direct that the person with ultimate settlement authority for each party be present at the conference. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 27, Eff. 1/14/94.)

24.5.335 BENCH RULINGS (1) ~~In order to more promptly deliver decisions in cases pending before the court, particularly those cases that do not involve complex factual questions or unique questions of law, t~~The court may, in its sole discretion, issue a bench ruling following the close of the testimony in a case. If the court issues a bench ruling ~~is issued~~, the following procedure will be followed.

(a) The judge will announce ~~his~~ the decision to the parties in open court, outlining the factual and legal reasoning therefor.

(b) The judge may direct one of the parties, usually the prevailing party, to reduce ~~his~~ the decision to writing by preparing written findings of fact, conclusions of law, and judgment.

(c) Following entry of the court's written findings of fact, ~~and~~ conclusions of law, and judgment, the parties shall have ~~20 days~~ the time set forth in Rule 303A in which to file objections to the court's decision and to request a rehearing~~,~~ pursuant to ARM 24.5.344. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89.)

24.5.336 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS

(1) The court may require either or both parties to file briefs or other documents ~~to be filed by either or both parties~~.

(2) The court may require ~~either~~ any or ~~both~~ all parties to file proposed findings of fact and conclusions of law. Requests that a decision not be certified as final pursuant to ARM 24.5.348(~~3~~ 4) should ordinarily be included in the proposed findings of fact and conclusions of law, with the basis for the request set forth.

(3) Briefs and proposed findings of fact and conclusions of law ~~will~~ must be filed ~~at a~~ by the date set by the judge or hearing examiner.

(4) Briefs and findings of fact and conclusions of law ~~may~~ will not be filed after the due date except by leave of court.

(5) The court encourages any party filing a trial brief or proposed findings of fact and conclusions of law to submit the document in electronic form by attaching it to an e-mail addressed to the court. Any party e-mailing such a brief or proposed findings and conclusions shall also file the original of the document with the court and serve the other parties as required by ARM 24.5.303. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.220; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1996 MAR p. 557, Eff. 2/23/96.)

24.5.337 MOTION FOR RECONSIDERATION (1) Any party may move for reconsideration of any order or decision of the ~~w~~Workers' ~~c~~Compensation ~~c~~Court. The motion ~~shall~~ must be filed within ~~20 days~~ the time set forth in Rule 303A after the ~~order or decision is served~~ court issues its order or decision. The opposing party shall have ~~10 days~~ the time set forth in Rule 303A thereafter to respond unless the court orders an earlier response. Upon receipt of the response, or the expiration of the time for such response, the motion will be deemed submitted for decision unless the court requests oral argument. The court will not consider a reply brief from the moving party.

(2) Within 20 days of the issuance of any order or final decision, the court may, on its own motion and for good cause, reconsider the order or decision.

(3) If the motion requests reconsideration of an appealable order or judgment, the court will not deem the original order or judgment ~~shall not be~~ final until and unless the court denies the motion. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1998 MAR p. 2167, Eff. 8/14/98.)

Rules 24.5.338 and 24.5.339 reserved

24.5.340 MASTERS AND EXAMINERS--PROCEDURE--RECOMMENDATIONS FOR BENCH ORDERS (1) The court shall appoint masters or examiners when, in the judgment of the court, justice will be served.

(2) Masters will ~~be appointed and~~ serve pursuant to ~~Rule 53,~~ Mont. R. Civ. P. 53. ~~In the event that a master is appointed,~~ If the Court appoints a master, the master shall utilize the procedures set forth in Rule 53 ~~shall be utilized~~ insofar as they relate to a trial without a jury.

(3) Examiners will be appointed and serve pursuant to 2-4-611, MCA. However, ~~because of the overriding concern in a workers' compensation case to render a prompt decision, especially in matters concerning the payment of a workers' biweekly compensation benefits, and because of~~ the time delays inherent in the procedures set forth in 2-4-621 and 2-4-622, MCA, ~~such provisions~~ are not appropriate in ~~w~~Workers' ~~c~~Compensation ~~c~~Court proceedings within the meaning of 39-71-2903, MCA. In lieu thereof, the court will utilize the following procedure in cases where it appoints a hearing examiner ~~has been appointed~~.

(a) Following submission of the case, the hearing examiner will submit ~~her/his~~ proposed findings of fact and conclusions of law to the judge. The proposed decision of the hearing examiner will not be served upon the parties until after the judge has made a ruling thereon. The judge will decide ~~make a decision as to~~ whether to adopt the proposed findings of fact and conclusions of law of the hearing examiner based solely upon the record and pleadings made before the hearing examiner. Findings of fact made by a hearing examiner will not be rejected or revised unless the court first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The Court may, upon its own motion, reconsider or alter ~~C~~conclusions of law and interpretations of statutes or rules written by a hearing examiner ~~may be reconsidered or altered by the court upon its own motion~~. Subject to the provisions of this subsection, the court will enter its order and judgment adopting the decision of the hearing examiner.

(b) Any party aggrieved by a decision of a hearing examiner adopted pursuant to this rule~~,~~ may obtain review thereof by filing a motion pursuant to ARM 24.5.344. Upon the filing of such a motion by either party, the court will, in its discretion, liberally grant opportunity for oral argument as to whether the decision should be amended, additional evidence should be heard, or a new trial should be granted.

(4) An examiner may, during or at the conclusion of a trial or a pretrial conference, advise the parties that an interlocutory order for payment of benefits or other relief to a party appears to be justified and such an order will be ~~forthwith~~ promptly submitted for approval by the judge. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.221; TRANS, from Admin., 1989 MAR p. 2117, Eff. 12/22/89; AMD, 1994 MAR p. 675; Eff. 4/1/94.)

Rule 24.5.341 reserved

24.5.342 TAXATION OF COSTS (1) Unless otherwise ordered by the court, within ~~10 days after the entry of a judgment allowing costs~~ the time set forth in Rule 303A, a prevailing claimant shall serve an application for taxation of costs on the parties against whom costs are to be ~~allowed an application for taxation of costs~~ assessed. The application must be filed with the court.

(2) The application for taxation of costs must be signed by the attorney for the claimant, or the claimant personally~~,~~ if appearing pro sé. The signature on the application is a certification by the person signing the application of the accuracy of the costs claimed and that the costs incurred were reasonable and necessary to the case.

(3) The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case~~,~~ and the issues upon which the claimant prevailed.

(4) The following are examples of costs that are generally found to be reasonable:

(a) deposition costs (reporter's fee and transcription cost), if the deposition is filed with the court;

(b) witness fees and mileage, as allowed by statute, for non-party fact witnesses;

(c) expert witness fees, including reasonable preparation time, for testimony either at deposition or at trial, but not at both;

(d) travel and lodging expenses of counsel for attending depositions;

(e) fees and expenses necessary for perpetuation or presentation of evidence offered at trial, such as recording, videotaping, or photographing exhibits;

(f) documented photocopy expenses;

(g) documented long-distance telephone expenses; and

(h) documented postage expenses.

(5) The following are examples of costs that are generally found not to be reasonable:

(a) trial transcripts ordered by the parties prior to any appeal;

(b) secretarial time; and

(c) items of ordinary office overhead not typically billed to clients.

(6) Items of cost not specifically listed in this rule may be awarded by the court, in accordance with the principles in (3).

(7) ~~An insurer may make specific objection to any item of costs claimed within 10 days of the service of the application~~ If an insurer objects to any item of costs claimed:

(a) ~~Within 10 days of the service of the application,~~ Within the time set forth in Rule 303A, the insurer shall serve on the prevailing claimant written objections to specific items of costs. The objections must be filed with the court.

(b) ~~Within 5 days of the service of the insurer's objections,~~ Within the time set forth in Rule 303A, the prevailing claimant shall serve on the insurer his or her response. The response must be filed with the court. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1996 MAR p. 557, Eff. 2/23/96.)

24.5.343 ATTORNEY FEES (1) In those cases where the claimant is awarded attorney fees pursuant to 39-71-611 or 39-71-612, MCA, the court will indicate in its findings of fact and conclusions of law the basis for the award of reasonable attorney fees, but the court will not determine the amount of the award until after the appeal

period for its final decision has passed or after affirmation of its final decision on appeal, unless pursuant to ARM 24.5.348(2), the final decision is not certified as final.

(2) The court will determine and award reasonable attorney fees in the following manner.

(a) Within ~~20 days~~ the time set forth in Rule 303A, following the expiration of the appeal period or remittitur on appeal of the court's final decision, or within ~~20 days~~ the time set forth in Rule 303A, after filing of the court's decision which pursuant to ARM 24.5.348(2) holds that the decision is not certified as final, the claimant's attorney shall file with the court a claim for attorney fees which ~~shall~~ must contain the following:

(i) a verified copy of the attorney fee agreement with the claimant;

(ii) documentation regarding the time spent by the attorney in representing the client; and

(iii) the attorney's claim concerning ~~his~~ the attorney's hourly fee.

(b) Within ~~20 days~~ the time set forth in Rule 303A, following the service of a claim for attorney fees, any party to the dispute may file an objection to the fees' reasonableness ~~of the fees~~, specifically identifying the objectionable portions of the claim and stating the reasons for the objection. General allegations to the effect that the award is unreasonable ~~shall~~ are not ~~be~~ sufficient.

(c) ~~If an objection is made~~ If a party objects to the reasonableness of the attorney fee claim, any party may request an evidentiary hearing, stating specifically the reasons a hearing is ~~needed~~ necessary. The request for hearing must be made at the same time an objection is filed if by the objecting party, or within ~~10 days~~ the time set forth in Rule 303A, of the filing of the objection if requested by claimant's attorney.

(d) The court will determine if an evidentiary hearing is required. If a hearing is deemed necessary, ~~it will be scheduled at the court's~~ the court will schedule the hearing at its earliest convenience and the court will issue its decision following the hearing. Evidentiary hearings will generally be set in Helena unless good cause to the contrary can be demonstrated by a party. If the court determines that no hearing is necessary, the court will determine attorney fees based on the claim and objections. No additional pleadings will be allowed unless requested by the court.

(e) The court's determination of reasonable attorney fees is a final decision for ~~the~~ purposes of appeal. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1985 MAR p. 107, Eff. 2/1/85; AMD, 1986 MAR p. 774, Eff. 5/16/86; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1996 MAR p. 557, Eff. 2/23/96.)

24.5.344 PETITION FOR NEW TRIAL AND/OR REQUEST FOR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW (1) After a trial, the court will issue an order or will issue findings of fact, ~~and~~ conclusions of law, and judgment setting forth the court's determination of the disputed issues. A party to the dispute may petition for a new trial or request amendment to the court's findings of fact and conclusions of law within ~~20 days~~ the time set forth in Rule 303A, after the court serves

the written order or judgment ~~is served~~.

(2) If a party files a petition for a new trial or requests ~~for~~ amendment ~~is filed~~, the party requesting the new trial or amendment shall set forth specifically and in full detail the relief requested. An opposing party will have ~~10 days~~ the time set forth in Rule 303A, from the date of service pursuant to ARM 24.5.303~~(3)~~ to respond.

(3) If a party files a petition for a new trial or requests ~~for~~ amendment ~~is filed~~, the original order or judgment issued by the court shall not be considered the final decision of the court pending the denial or granting of the new trial or amendment.

(4) If the court grants a new trial ~~is granted~~, the matter will be scheduled for trial pursuant to ARM 24.5.310. As determined by the court, the matter may be decided based on the testimony taken at the initial trial and at the new trial, or by a de novo trial. After the new trial, the court will issue an order or findings of fact, ~~and~~ conclusions of law, and judgment setting forth the court's determination of the disputed issues. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.222; AMD, 1985 MAR p. 107, Eff. 2/1/85; AMD, 1986 MAR p. 774, Eff. 5/16/86; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94.)

24.5.345 WRIT OF EXECUTION (1) The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution, ~~shall~~ must be in accordance with the statutes of the state of Montana that are applicable to executions in civil cases in district court, as set forth in Title 25, chapter 13, MCA, except that the court will not issue a ~~no~~ writ of execution ~~shall be issued~~ until after the time has expired for requesting a rehearing or amendment of the court's decision.

(2) In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1992 MAR p. 922, Eff. 5/1/92.)

24.5.346 STAY OF JUDGMENT PENDING APPEAL (1) The party appealing a judgment of the workers' compensation judge may request a stay of execution of the judgment or order pending resolution of the appeal. A request for new trial and/or request for amendment to findings of fact and conclusions of law ~~shall~~ will be deemed an automatic stay until the request is ruled upon. If the parties stipulate that no bond ~~shall be~~ is required, or if it is shown to the satisfaction of the court that adequate security exists for payment of the judgment, the court may waive the bond requirement.

(2) Except as provided for herein, the procedure for requesting a stay and the procedure for posting a supersedeas bond will be the same as the procedure in Rule ~~7(a) and 7(b), respectively, of the~~ 22(1), Mont. R. App. P. and ARM 24.5.316. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1992 MAR p. 922,

Eff. 5/1/92; AMD, 1994 MAR p. 675, Eff. 4/1/95.)

Rule 24.5.347 reserved

24.5.348 CERTIFICATION OF DECISIONS, APPEALS TO SUPREME COURT (1) Appeals from the ~~w~~Workers' ~~c~~Compensation ~~c~~Court ~~shall~~ must be made as in the case of an appeal from a district court as provided in ~~Rule 72,~~ Mont. R. Civ. P. 72.

(2) The court's final certification for the purposes of appeal ~~shall be~~ is considered as a notice of entry of judgment.

(3) Appeals must be ~~i~~in compliance with the Montana Rules of Appellate Procedure. ~~Rule 10(a) of the Mont. R. App. P. an original and two copies of each transcript of proceedings must be lodged with the clerk of this court for filing.~~

(4) The court will certify its decisions as final without a determination of the amount of reasonable costs and attorney fees, except that:

(a) A party to the dispute may submit, with the party's proposed findings and conclusions or otherwise at any time prior to issuance of the decision and certification, a request that the decision not be certified as final. Such a request must include a showing of ~~the~~ good cause upon which the request is based.

(b) The court in its discretion may grant the request, in which case the decision of the court ~~shall~~ will not certify the judgment for purposes of appeal until the amount of the attorney fees and costs is determined.

(c) Regardless of whether or not the decision is certified as final for appeal purposes, ARM 24.4~~5~~.344 ~~shall still~~ will determine and limit the time within which to petition for new trial or request amendment to the court's findings of fact and conclusions of law. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.223; AMD, 1987 MAR p. 1618, Eff. 9/25/87; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 1998 MAR p. 1281, Eff. 5/15/98.)

24.5.349 RULES COMPLIANCE (1) If a party neglects or refuses to comply with the provisions of ~~this subchapter~~ these rules, the court may dismiss a matter with or without prejudice, grant an appropriate order for a party, or take other appropriate action. However, the court may, in its discretion and in the interests of justice, waive irregularities and noncompliance with any of the provisions of ~~this subchapter~~ these rules. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.224; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89.)

24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTERS 71 AND 72, MCA (1) An appeal from a final decision of the ~~d~~Department of ~~l~~Labor and ~~i~~Industry under Title 39, chapters 71 and 72, MCA, other

than an appeal of a department order regarding payment of benefits pursuant to 39-71-610, MCA, ~~shall~~ must be made by filing a notice of appeal with the court ~~or with the department~~. The notice of appeal ~~shall~~ must be served by mail on all other parties and the legal services division of the ~~d~~Department of ~~l~~Labor and ~~i~~Industry and ~~should~~ must include:

(a) the relief to which the appellant believes ~~he~~ the appellant is entitled; and

(b) the grounds upon which the appellant contends ~~he~~ the appellant is entitled to that relief.

(2) The filing of the notice ~~shall~~ will not stay the department decision. However, upon application of a party, the court may~~, upon application of a party,~~ order a stay upon terms which the court considers proper.

(3) Any party or the court may request a transcript of the proceeding. Upon receiving such request, the department ~~shall have~~ has 30 days in which to prepare and file the transcript~~,~~ unless such time is shortened or extended by the court. ~~The parties may, i~~In the alternative, the parties may agree by written stipulation to other arrangements for transcribing the hearing. The appealing party shall be responsible for the cost of preparing the transcript unless otherwise ordered by the court.

(4) Any party to an appeal may request oral argument on the matters raised in the appeal. A request for oral argument must be made by the time specified for the last brief. Failure to timely request oral argument is deemed to be a waiver of the right to an oral argument.

(5) A motion for leave to present additional evidence must be filed no later than the time set for the last brief or, if oral argument is timely requested, then no later than the day before the argument. If it is shown to the satisfaction of the court that the additional evidence is material and that ~~there were~~ good reasons ~~for failure~~ exist for failing to present it in the department proceeding ~~before the department~~, ~~then~~ the court may remand the matter to the department and order that the additional evidence be taken before the department upon conditions determined by the court. The department may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The court shall base its decision on the record.

(7) ARM 24.5.344, relating to new trials, applies to decisions under this rule. However, the decision of the court may or may not be in the form of findings of fact and conclusions of law. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.225; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2000 MAR p. 1513, Eff. 6/16/00.)

24.5.351 DECLARATORY RULINGS (1) Where the court has jurisdiction it can issue declaratory rulings.

(2) Proceedings for a declaratory ruling ~~shall~~ must be the same as in all other

disputes. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 675, Eff. 4/1/94.)

24.5.352 REFERENCE TO MONTANA RULES OF CIVIL PROCEDURE

(1) If no express provision is made in these rules regarding a matter of procedure, the court will be guided, where appropriate, by considerations and procedures set forth in the ~~Mont. R. Civ. P.~~ Montana Rules of Civil Procedure. (History: ~~Sec.~~ 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00.)

Rule 24.5.353 through 24.5.358 reserved

24.5.359 NOTICE OF REPRESENTATION (REPEALED) (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83, TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89, REP, 1990 MAR p. 847, Eff. 5/1/90.)

24.5.360 REVIEW (1) The court will annually review and when necessary revise the rules of the court. (History: ~~Sec.~~ 2-4-201, MCA; IMP, ~~Sec.~~ 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.231; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89.)